

### Preliminary Instruction

This case arises out of a police officer-involved shooting that occurred at approximately 11:15 p.m. on June 19, 2016 in the City of Syracuse at a community cookout and party in the James Geddes Housing Complex. In this case, you will hear this event referred to as the “Father’s Day Barbecue” or “Father’s Day Cookout.” During the event, a 41-year-old man by the name of Gary Porter was struck by gunfire and later died as a result of his injuries.

Plaintiff in this case is the Estate of Mr. Porter, who left six children whose representative in court is its executor, Tanajee Maddox, who is Mr. Porter’s daughter. Plaintiff Tanajee Maddox on behalf of Porter’s six children, including herself, who has the burden of proof, has sued Defendant Police Officer Kelsey Francemone for one claim under 42 U.S.C. §1983 alleging a violation of the Fourth Amendment to the United States Constitution on the basis of constitutionally excessive force.

In particular, Plaintiff alleges that the force used by Officer Francemone against Mr. Porter was constitutionally excessive and objectively unreasonable because Mr. Porter was an innocent bystander to the exchange of gunfire that occurred at the cookout and was unarmed at the time he was shot.

Defendant Officer Francemone denies Plaintiff’s allegations and contends that her response to the threat presented by the exchange of gunfire at the Father’s Day Cookout was objectively reasonable and that she did not violate the Constitution. Officer Francemone further contends that she observed Mr. Porter to be an armed participant in the exchange of gunfire and that she reasonably perceived him to be a deadly threat at the time she fired her service weapon in his direction.

At the end of the trial, after you have heard all of the evidence, I will give you more detailed instructions regarding the law and the decisions you will be required to make when you deliberate.